

Lee A. Cirsch (SBN 227668)
Lee.Cirsch@capstonelawyers.com
Robert K. Friedl (SBN 134947)
Robert.Friedl@capstonelawyers.com
Trisha K. Monesi (SBN 303512)
Trisha.Monesi@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff
Amy Vail

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AMY VAIL, individually, and on behalf of a class of similarly situated individuals,

Plaintiff.

V.

YAHOO! INC., a Delaware corporation,

Defendant

Case No.:

CLASS ACTION COMPLAINT FOR:

- (1) Negligence
- (2) Breach of Express and Implied Contract
- (3) Violation of Unfair Competition Law,
California Business & Professions Code
§ 17200 *et seq.*

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff Amy Vail (“Plaintiff”) brings this action for herself and on behalf of all persons in the United States who maintained an account, at any time, from four years prior to the filing of this complaint, with Yahoo! Inc. (“Defendant” or “Yahoo”) that was vulnerable or potentially vulnerable to cybersecurity breaches (“Yahoo Users”).

2. Since 1995, Yahoo has been one of the world's leading technology companies, providing numerous internet-based services and products to consumers and businesses. Throughout the course of its business, Yahoo has collected and maintained an extensive amount of its users' personal information including, without limitation, the users' names, email addresses, telephone numbers, birth dates, passwords, security questions, and security answers required to create a Yahoo account. However, Yahoo failed, and continues to fail, to provide adequate protection of its users' personal and confidential information and has failed to provide sufficient and timely notice or warning of potential and actual cybersecurity breaches to its users.

3. In an ongoing investigation, Yahoo has recently revealed that its users' personal information has been subject to two of the largest data security breaches ever disclosed, **affecting over one billion Yahoo user accounts**. According to Yahoo, in July 2016, a state-sponsored actor "claimed to have obtained certain Yahoo user data" but Yahoo was unable to substantiate the hacker's claims and took no further action including either enhancing its security measures or notifying its users of the potential data breach. Yahoo knew about and continued to conceal the security breach from its users until approximately 3 months later. Specifically, on September 22, 2016, Yahoo issued the following statement:

A recent investigation by Yahoo has confirmed that a copy of certain user account information was stolen from the company's network in late 2014 by what it believes is a state-sponsored actor. The account information may have included names, email addresses, telephone numbers, dates of birth, hashed passwords (the vast majority with bcrypt) and, in some cases, encrypted or unencrypted security questions and answers...Based on the ongoing investigation, Yahoo believes that information associated with at least 500 million user account was stolen [...] ¹ ("Security Incident I").

¹ Bob Lord, CISO, *An Important Message About Yahoo User Security*, Yahoo Tumblr

1 4. Then, on or around October 28, 2016, Yahoo stated in its Form 10-Q filing with
2 the SEC that it had identified the “state-sponsored actor” in late 2014. However, on
3 information and belief, Yahoo took no actions at that time to enhance its security measures or
4 notify its users of a potential cybersecurity breach or vulnerability.

5. Further, **just today**, Yahoo announced that, in August 2013, an “unauthorized
third party” stole personal data associated with **over one billion user accounts** by utilizing
Yahoo’s proprietary code in order to forge cookies (“Security Incident II”).² Yahoo stated
that Security Incident II was “likely distinct” from Security Incident I but that they “have
connected some of this activity to the same state-sponsored actor believed to be responsible”
for Security Incident I.

11 6. As a result of Defendant’s failure to maintain adequate security measures and
12 timely security breach notifications, Yahoo Users’ personal and private information has been
13 repeatedly compromised and remains vulnerable. Further, Yahoo Users have suffered an
14 ascertainable loss in that they have had to undertake additional security measures, at their own
15 expense, to minimize the risk of future data breaches including, without limitation, changing
16 passwords, security questions and security answers, and purchasing a security freeze on their
17 credit files. However, due to Yahoo’s ongoing and incomplete investigation, Yahoo Users
18 have no guarantee that the above security measures will in fact adequately protect their
19 personal information. As such, Plaintiff and other Class Members have an ongoing interest in
20 ensuring that their personal information is protected from past and future cybersecurity
21 threats.

THE PARTIES

23 7. Plaintiff Amy Vail (“Plaintiff”) is a citizen of the state of New York, residing
24 in Binghamton, New York.

26 (Sept. 22, 2016), <https://yahoo.tumblr.com/post/150781911849/an-important-message-about-yahoo-user-security> (last visited Dec. 14, 2016).
27

² *Yahoo Security Notice December 14, 2016*, Yahoo! Help, <https://help.yahoo.com/kb/account/SLN27925.html?impressions=true> (last visited Dec. 14, 2016).

8. Defendant Yahoo! Inc. is a corporation organized and in existence under the laws of the State of Delaware and registered to do business in the State of California. Yahoo! Inc.'s Corporate Headquarters are located at 701 First Avenue, Sunnyvale, California, 94089.

9. At all relevant times, Defendant was and is engaged in the business of providing internet-based services and products in Santa Clara County and throughout the United States of America.

JURISDICTION

10. This is a class action.

9 11. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.
10 § 1331 because this action arises under the Constitution or laws of the United States and the
11 Class Action Fairness Act, 28 U.S.C. § 1332(d)(2) and (6), in that, as to each Class defined
12 herein:

- (a) the matter in controversy exceeds \$5,000,000.00, exclusive of interest and costs;
- (b) this is a class action involving 100 or more class members; and
- (c) this is a class action in which at least one member of the Plaintiff class is a citizen of a State different from at least one Defendant.

18 12. The Court has personal jurisdiction over Defendant, which have at least
19 minimum contacts with the State of California because their headquarters are located there
20 and they have conducted business there and have availed themselves of California's markets
21 through their internet-based services.

VENUE

23 13. Yahoo, through its business of providing internet-based services and products
24 to Yahoo Users, has established sufficient contacts in this district such that personal
25 jurisdiction is appropriate. Defendant is deemed to reside in this district pursuant to 28 U.S.C.
26 § 1391(a).

27 14. In addition, Defendant is headquartered here and has conducted business here

1 and availed itself of California's markets through its marketing, sale, and administration of
 2 internet-based services. Venue is proper in this Court pursuant to 28 U.S.C. § 1331(a).

3 FACTUAL ALLEGATIONS

4 15. In order to utilize Yahoo's services and products, consumers, including
 5 Plaintiff and other Class Members, must create an online account through Yahoo. As such,
 6 Yahoo has collected and maintained an extensive amount of its users' personal account
 7 information including, without limitation, the users' names, email addresses, telephone
 8 numbers, birth dates, passwords, security questions, and security answers required to create a
 9 Yahoo account. Consumers provide this personal information to Yahoo in reliance on
 10 Yahoo's assurances that it "takes your privacy seriously" and "[p]rotecting our systems and
 11 our users' information is paramount to ensuring Yahoo users enjoy a secure user experience
 12 and maintaining our users' trust.³ Yahoo further maintains a privacy policy that provides, in
 13 part, that:

14 **Information Sharing & Disclosure**

15 16. Yahoo does not rent, sell, or share personal information about you with other people or
 17 non-affiliated companies except to provide products or services you've requested,
 18 when we have your permission, or under the following circumstances:

- 19 • We provide the information to trusted partners who work on behalf of or with
 Yahoo under confidentiality agreements. These companies may use your
 personal information to help Yahoo communicate with you about offers from
 Yahoo and our marketing partners. However, these companies do not have any
 independent right to share this information.
- 20 • We have a parent's permission to share the information if the user is a child
 under age 13. See Children's Privacy & Family Accounts for more information
 about our privacy practices for children under 13 .
- 21 • We respond to subpoenas, court orders, or legal process (such as law
 enforcement requests), or to establish or exercise our legal rights or defend
 against legal claims.
- 22 • We believe it is necessary to share information in order to investigate, prevent,
 or take action regarding illegal activities, suspected fraud, situations involving
 potential threats to the physical safety of any person, violations of Yahoo's
 terms of use, or as otherwise required by law.
- 23 • We transfer information about you if Yahoo is acquired by or merged with
 another company. In this event, Yahoo will notify you before information about

27

 28 ³ *Security at Yahoo*, Yahoo! Privacy Center, <https://policies.yahoo.com/us/en/yahoo/privacy/topics/security/index.htm> (last visited Dec. 14, 2016).

1 you is transferred and becomes subject to a different privacy policy.

2 **Confidentiality & Security**

3 We limit access to personal information about you to employees who we believe
4 reasonably need to come into contact with that information to provide products or
services to you or in order to do their jobs.

5 We have physical, electronic, and procedural safeguards that comply with federal
6 regulations to protect personal information about you.

7 To learn more about security, including the security steps we have taken and security
steps you can take, please read Security at Yahoo.⁴

8 16. However, despite Yahoo's assurances, Yahoo has failed, and continues to fail,
9 to provide adequate protection of its users' personal and confidential information, as
10 evidenced by Yahoo's announcements regarding egregious user data breaches affecting over
11 one billion Yahoo User accounts since 2013. Further, Yahoo failed to provide sufficient and
12 timely notice or warning of potential and actual cybersecurity breaches to its users so as to
13 mitigate the users' risks.

14 17. According to Yahoo, in July 2016, a state-sponsored actor "claimed to have
15 obtained certain Yahoo user data" but Yahoo was unable to substantiate the hacker's claims
16 and took no further action including enhancing its security measures or notifying its users of
17 the potential data breach. Yahoo knew about and continued to conceal the security breach
18 from its users until approximately 3 months later. Specifically, on September 22, 2016,
19 Yahoo issued the following statement:

20 A recent investigation by Yahoo has confirmed that a copy of certain user
21 account information was stolen from the company's network in late 2014 by
22 what it believes is a state-sponsored actor. The account information may have
23 included names, email addresses, telephone numbers, dates of birth, hashed
24 passwords (the vast majority with bcrypt) and, in some cases, encrypted or
25 unencrypted security questions and answers...Based on the ongoing
investigation, Yahoo believes that information associated with at least 500
million user account was stolen [...]⁵ ("Security Incident I").

26 _____
27 ⁴ *Yahoo Privacy Center*, [Yahoo.com](https://policies.yahoo.com/us/en/yahoo/privacy/index.htm), <https://policies.yahoo.com/us/en/yahoo/privacy/index.htm> (last visited Dec. 14, 2016).

28 ⁵ Bob Lord, CISO, *An Important Message About Yahoo User Security*, [Yahoo Tumblr](https://yahoo.tumblr.com/post/150781911849/an-important-message-about) (Sept. 22, 2016), <https://yahoo.tumblr.com/post/150781911849/an-important-message-about>

1 18. Then, on or around October 28, 2016, Yahoo stated in its Form 10-Q filing with
 2 the SEC that it had identified the “state-sponsored actor” in late 2014. However, on
 3 information and belief, Yahoo took no actions at that time to enhance its security measures at
 4 or notify its users of a potential cybersecurity breach or vulnerability.

5 19. Further, on December 14, 2016, Yahoo announced that, in August 2013, an
 6 “unauthorized third party” stole personal data associated with over one billion user accounts
 7 by utilizing Yahoo’s proprietary code in order to forge cookies (“Security Incident II”).
 8 Yahoo issued the following statement, in part, regarding Security Incident II:

9 Law enforcement provided Yahoo in November 2016 with data files that a third
 10 party claimed was Yahoo user data. We analyzed this data with the assistance of
 11 outside forensic experts and found that it appears to be Yahoo user data. Based
 12 on further analysis of this data by the forensic experts, we believe an
 13 unauthorized third party, in August 2013, stole data associated with more than
 14 one billion user accounts. Yahoo has not been able to identify the intrusion
 15 associated with this theft. We believe this incident is likely distinct from the
 16 incident we disclosed on September 22, 2016. We are notifying potentially
 17 affected users and have taken steps to secure their accounts, including requiring
 18 users to change their passwords. Yahoo has also invalidated unencrypted
 19 security questions and answers so that they cannot be used to access an account.

20 Separately, our outside forensic experts have been investigating the creation of
 21 forged cookies that could allow an intruder to access users’ accounts without a
 22 password. Based on the ongoing investigation, the outside forensic experts have
 23 identified user accounts for which they believe forged cookies were taken or
 24 used in 2015 or 2016. The company is notifying the affected account holders,
 25 and has invalidated the forged cookies. We have connected some of this activity
 26 to the same state-sponsored actor believed to be responsible for the data theft we
 disclosed on September 22, 2016.⁶

27 20. The insufficient security policies and procedures implemented by Yahoo is a
 28 material fact that a reasonable consumer would consider when deciding whether to create an
 online account and provide personal information. Had Plaintiff and other Class Members
 known that Yahoo failed to employ necessary and adequate protection of their personal
 information, they would not have created a Yahoo account. In fact, Plaintiff and other Class

27 yahoo-user-security (last visited Dec. 14, 2016).

28 ⁶ *Yahoo Security Notice December 14, 2016*, Yahoo! Help, <https://help.yahoo.com/kb/account/SLN27925.html?impressions=true> (last visited Dec. 14, 2016).

1 Members relied on Yahoo's Security and Privacy policies ensuring implementation of
2 "physical, electronic, and procedural safeguards" to protect their personal information.

3 **B. Plaintiff Amy Vail**

4 21. Plaintiff has been a Yahoo user continually for over ten (10) years and has been
5 damaged as a result of Security Incident I and Security Incident II. She remains concerned
6 about the potential misuse of her personal information and the continued vulnerability of her
7 Yahoo account information. As such, she has taken steps recommended by Yahoo in an
8 attempt to protect her personal information provided to Yahoo, including changing her
9 password and security questions.

10 22. At no point prior to Yahoo's announcement on September 22, 2016, was
11 Plaintiff informed by Yahoo of a potential security breach exposing her personal data or
12 provided any instructions regarding additional security measures to minimize her risk of
13 identity theft.

14 **CLASS ACTION ALLEGATIONS**

15 23. Plaintiff brings this lawsuit as a class action on behalf of herself and all others
16 similarly situated as members of the proposed Class pursuant to pursuant to Federal Rules of
17 Civil Procedure 23(a), 23(b)(2), 23(b)(3), and 23(c)(4). This action satisfies the numerosity,
18 commonality, typicality, adequacy, predominance, and superiority requirements of those
19 provisions.

20 24. The Class and Sub-Class are defined as:

21 **Nationwide Class:** All individuals in the United States who
22 maintained an account, at any time, from four year prior to the
23 filing of this complaint, with Yahoo! Inc. that was vulnerable or
potentially vulnerable to cybersecurity breaches (the
"Nationwide Class" or "Class").

24 25. Excluded from the Class and Sub-Classes are: (1) Defendant, any entity or
25 division in which Defendant has a controlling interest, and their legal representatives, officers,
26 directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's
27 staff; (3) any Judge sitting in the presiding state and/or federal court system who may hear an
28

1 appeal of any judgment entered; and (4) those persons who have suffered personal injuries as
2 a result of the facts alleged herein. Plaintiff reserves the right to amend the Class and Sub-
3 Class definitions if discovery and further investigation reveal that the Class and Sub-Class
4 should be expanded or otherwise modified.

5 26. Numerosity: Although the exact number of Class Members is uncertain and
6 can only be ascertained through appropriate discovery, the number is great enough such that
7 joinder is impracticable. The disposition of the claims of these Class Members in a single
8 action will provide substantial benefits to all parties and to the Court. The Class Members are
9 readily identifiable from information and records in Defendant's possession, custody, or
10 control.

11 27. Typicality: Plaintiff's claims are typical of the claims of the Class in that
12 Plaintiff, like all Class Members, has maintained a Yahoo account since August 2013. The
13 representative Plaintiff, like all Class Members, has been damaged by Defendant's misconduct
14 in that they have had to undertake additional security measures, at their own expense, to
15 minimize the risk of future data breaches. Furthermore, the factual bases of Yahoo's
16 misconduct are common to all Class Members and represent a common thread resulting in
17 injury to all Class Members.

18 28. Commonality: There are numerous questions of law and fact common to
19 Plaintiff and the Class that predominate over any question affecting only individual Class
20 Members. These common legal and factual issues include the following:

- 21 (a) Whether Yahoo owed a duty of care to Plaintiff and Class Members
22 with respect to the security of their personal information;
- 23 (b) Whether Yahoo had a legal and/or contractual duty to use reasonable
24 security measures to protect Plaintiff's and Class Members' personal
25 information;
- 26 (c) Whether Yahoo took reasonable steps and measures to safeguard
27 Plaintiff's and Class Members' personal information;

- 1 (d) Whether Yahoo breached its duty to exercise reasonable care in
- 2 handling Plaintiff's and Class Members' personal information;
- 3 (e) Whether an implied contract existed between Yahoo and Class
- 4 Members;
- 5 (f) Whether Defendant's acts and omissions described herein give rise to a
- 6 claim of negligence;
- 7 (g) Whether Yahoo's security procedures and practices violated *California*
- 8 *Business & Professions Code §§ 17200 et seq.;*
- 9 (h) Whether Yahoo knew or should have known of Security Incident I and
- 10 Security Incident II prior to its late 2016 announcements;
- 11 (i) Whether Yahoo had a duty to promptly notify Class Members that their
- 12 personal information was, or potentially could be, compromised;
- 13 (j) Whether Plaintiff and other Class Members are entitled to damages or
- 14 equitable relief, including but not limited to a preliminary and/or
- 15 permanent injunction; and
- 16 (k) Whether Defendant is obligated to inform Class Members of their right
- 17 to seek reimbursement for having paid for a security freeze on their
- 18 credit files.

19 29. Adequate Representation: Plaintiff will fairly and adequately protect the
20 interests of the Class Members. Plaintiff has retained attorneys experienced in the prosecution
21 of class actions, including consumer and product defect class actions, and Plaintiff intends to
22 prosecute this action vigorously.

23 30. Predominance and Superiority: Plaintiff and Class Members have all suffered
24 and will continue to suffer harm and damages as a result of Defendant's unlawful and
25 wrongful conduct. A class action is superior to other available methods for the fair and
26 efficient adjudication of the controversy. Absent a class action, most Class Members would
27 likely find the cost of litigating their claims prohibitively high and would therefore have no
28

1 effective remedy at law. Because of the relatively small size of the individual Class
2 Members' claims, it is likely that only a few Class Members could afford to seek legal redress
3 for Defendant's misconduct. Absent a class action, Class Members will continue to incur
4 damages, and Defendant's misconduct will continue without remedy. Class treatment of
5 common questions of law and fact would also be a superior method to multiple individual
6 actions or piecemeal litigation in that class treatment will conserve the resources of the courts
7 and the litigants, and will promote consistency and efficiency of adjudication.

8 **FIRST CAUSE OF ACTION**

9 **(Negligence)**

10 31. Plaintiff incorporates by reference the allegations contained in each and every
11 paragraph of this Complaint.

12 32. Plaintiff brings this cause of action on behalf of herself and on behalf of the
13 Nationwide Class.

14 33. Yahoo owed a duty to Plaintiff and Class Member to exercise reasonable care
15 in obtaining, retaining, securing, safeguarding, deleting and protecting their personal
16 information in its possession from being compromised, lost, stolen, accessed and misused by
17 unauthorized persons. This duty included, among other things, designing, implementing,
18 maintaining and testing Defendant's security systems and protocols, consistent with industry
19 standards and requirements, to ensure that Plaintiff's and Class members' personal
20 information in Yahoo's possession was adequately secured and protected. Yahoo further
21 owed a duty to Plaintiff and Class Members to implement processes that would detect a
22 breach of its security system in a timely manner and to timely act upon warnings and alerts,
23 including those generated by its own security systems.

24 34. Yahoo owed a duty of care to Plaintiff and Class Members because they were
25 foreseeable and probable victims of any inadequate security practices. Yahoo solicited,
26 gathered, and stored the personal data provided by Plaintiff and Class Members in the regular
27 course of its business. Yahoo knew that a breach of its systems would cause damages to

1 Plaintiff and Class Members, and Yahoo had a duty to adequately protect such sensitive
2 personal information.

3 35. Similarly, Yahoo owed a duty to Plaintiff and Class Members to timely disclose
4 any incidents of data breaches, where such breaches compromised the personal information of
5 Plaintiff and Class Members. Plaintiff and Class Members were foreseeable and probable
6 victims of any inadequate notice practices. Yahoo knew that, through its actions and
7 omissions, it had caused the sensitive personal information of Plaintiff and Class Members to
8 be compromised and accessed by unauthorized third parties yet failed to mitigate potential
9 harm to its users by providing timely notice of the security breach.

10 36. Yahoo breached its duties owed to Plaintiff and Class Members by failing to
11 exercise reasonable care in the adoption, implementation, and maintenance of adequate
12 security procedures and protocols and by failing to timely notify Plaintiff and Class Members
13 of potential and actual security breaches. Yahoo's breach of its duties owed to Plaintiff and
14 members of the Class caused injuries to Plaintiff and members of the Class, including but not
15 limited to a) theft of their personal information; b) costs associated with the detection and
16 prevention of identity theft; c) costs associated with time spent and the loss of productivity
17 from taking time to address and attempt to ameliorate and mitigate the actual and future
18 consequences of the aforementioned data breaches, including without limitation finding
19 fraudulent charges, cancelling and reissuing credit cards and bank accounts, purchasing credit
20 monitoring and identity theft protection, and the stress, nuisance and annoyance of dealing
21 with all issues resulting from the data breaches; d) the imminent and impending injury flowing
22 from potential fraud and identity theft posed by the unauthorized control and use of their
23 personal information by third parties; e) damages to and diminution in value of their personal
24 information entrusted to Yahoo with the understanding that Yahoo would safeguard their data
25 against theft and not allow access and misuse of their data by others; and f) the continued risk
26 to their personal information, which remains in the possession of Yahoo and which is subject
27 to further breaches so long as Yahoo fails to undertake appropriate and adequate measures to
28

1 protect data in its possession.

2 37. But for Yahoo's negligent and wrongful breach of its duties owed to Plaintiff
3 and Class Members, Plaintiff and Class Members would not have been harmed and could have
4 taken remedial measures to protect their personal information.

5 38. Plaintiff and Class Members seek an aware of actual damages.

6 **SECOND CAUSE OF ACTION**

7 **(Breach of Express and Implied Contracts)**

8 39. Plaintiff incorporates by reference the allegations contained in each and every
9 paragraph of this Complaint.

10 40. Plaintiff brings this cause of action on behalf of herself and on behalf of the
11 Nationwide Class.

12 41. Yahoo's Terms of Service, which incorporates by reference Yahoo's Privacy
13 Policy discussed above, forms the contract between Yahoo and its users.

14 42. Additionally, when Plaintiff and Class Members created a Yahoo account, they
15 entered into an implied contract with Yahoo under which Yahoo requested personal
16 information for the purpose of increasing its revenues. Plaintiff and Class Members provided
17 the requested personal information in order to obtain Yahoo's services, for which Yahoo
18 agreed to protect all personal information provided. Plaintiff and Class Members are
19 reasonable consumers who would not have provided Yahoo with their personal information in
20 the absence of an implied contract.

21 43. Yahoo failed to adequately safeguard and protect the personal information of
22 Plaintiff and Class Members, so that one or more unauthorized third parties were able to
23 obtain access to such personal information within Yahoo's network since at least August
24 2013.

25 44. In allowing security breaches that compromised the personal information of
26 over 1 billion Yahoo users, Yahoo breached the express terms of its Terms of Service and
27 Privacy Policy that provided it would "not rent, sell, or share personal information about you

with other people or non-affiliated companies” and the terms of its implied contract to protect its users’ personal information.

45. As a result of Yahoo's breach of the express and implied contracts, Plaintiff and Class Members suffered and will continue to suffer damages including, but not limited to, loss of their personal information, loss of money, the objectively reasonable likelihood of identity theft and/or fraudulent purchases, and loss of money and costs incurred as a result of increased risk of identity theft and fraudulent purchases, all of which have ascertainable value to be proven at trial.

THIRD CAUSE OF ACTION

(Violation of California Business & Professions Code § 17200, *et seq.*)

46. Plaintiff incorporates by reference the allegations contained in each and every paragraph of this Complaint.

47. Plaintiff brings this cause of action on behalf of herself and on behalf of the Nationwide Class.

48. As a result of their reliance on Defendant's omissions, Yahoo Users utilizing Defendant's internet-based services suffered an ascertainable loss due to Defendant's failure to provide adequate protection of its users' personal and confidential information and failure to provide sufficient and timely notice or warning of potential and actual cybersecurity breaches.

49. California Business & Professions Code § 17200 prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or misleading advertising.”

50. Plaintiff and Class Members are reasonable consumers who expected Yahoo to
vehemently protect the personal information entrusted to them and to be informed by Yahoo
of potential and actual cybersecurity vulnerabilities as soon as Yahoo became aware of such
threat.

51. Yahoo's acts and omissions were intended to induce Plaintiff and Class

1 Members' reliance on Yahoo's guarantee that their personal information was secure and
2 protected, to increase the number of Yahoo subscribers, and, ultimately, to increase Yahoo's
3 revenues. Plaintiff and the Class members were deceived by Yahoo's failure to properly
4 implement adequate, commercially reasonable security measures to protect their personal
5 information, and Yahoo's failure to promptly notify them of the security breach. As a result,
6 Yahoo's conduct constitutes "fraudulent" business acts or practices.

7 52. Defendant's conduct was and is likely to deceive consumers.

8 53. In failing to implement adequate security procedures and protocols to protect
9 Plaintiff and Class Members' personal information and promptly notify Plaintiff and Class
10 Members of potential and actual security threats, Defendant has knowingly and intentionally
11 concealed material facts and breached its duty not to do so.

12 54. Defendant was under a duty to Plaintiff and Class Members to protect its users'
13 personal information and promptly notify users of potential and actual security threats, and
14 other omitted facts alleged herein, because:

- 15 (a) Defendant was in a superior position to know the specifics of a potential
16 or actual security breach; and
- 17 (b) Defendant actively concealed information known to Defendant
18 regarding potential and actual security breaches affecting user account
19 information.

20 55. The facts Defendant concealed from or did not disclose to Plaintiffs and Class
21 Members are material in that a reasonable person would have considered them to be important
22 in deciding whether to utilize Yahoo's services or cancel, change or otherwise modify their
23 account information. Had Plaintiff and other Class Members known that Yahoo failed to
24 employ necessary and adequate protection of their personal information and would fail to
25 timely notify them of potential security breaches, they would not have created a Yahoo
26 account.

27 56. By its conduct, Defendant has engaged in unfair competition and unfair and
28

1 fraudulent business practices. Defendant's unfair or deceptive acts or practices occurred
2 repeatedly in Defendant's trade or business, and were capable of deceiving a substantial
3 portion of the purchasing public.

4 57. As a direct and proximate result of Defendant's unfair and deceptive practices,
5 Plaintiff and Class Members will continue to suffer actual damages.

6 58. Defendant has been unjustly enriched and should be required to make
7 restitution to Plaintiff and Class Members pursuant to §§ 17203 and 17204 of the California
8 Business & Professions Code.

9 **RELIEF REQUESTED**

10 59. Plaintiff, on behalf of himself, and all others similarly situated, requests the
11 Court to enter judgment against Defendant, as follows:

- 12 (a) An order certifying the proposed Class, designating Plaintiff as named
13 representative of the Class, and designating the undersigned as Class
14 Counsel;
- 15 (a) An order enjoining Defendant from further unfair and deceptive
16 business practices regarding the maintenance and protection of its users'
17 personal information;
- 18 (b) An award to Plaintiff and the Class for compensatory, exemplary, and
19 statutory damages, including interest, in an amount to be proven at trial;
- 20 (c) A declaration that Defendant must disgorge, for the benefit of the Class,
21 all or part of the ill-gotten revenues it collected from its conduct alleged
22 herein, or make full restitution to Plaintiff and Class Members;
- 23 (d) An award of attorneys' fees and costs, as allowed by law;
- 24 (e) An award of attorneys' fees and costs pursuant to California Code of
25 Civil Procedure § 1021.5;
- 26 (f) An award of pre-judgment and post-judgment interest, as provided by
27 law; and

1 (g) Such other relief as may be appropriate under the circumstances.

2 **DEMAND FOR JURY TRIAL**

3 60. Pursuant to Federal Rule of Civil Procedure 38(b) and Northern District of
4 California Local Rule 3-6, Plaintiff demands a trial by jury of any and all issues in this action
5 so triable.

6 Dated: December 14, 2016

7 Respectfully submitted,

8 Capstone Law APC

9 By: /s/ Lee A. Cirsch

10 Lee A. Cirsch
11 Robert K. Friedl
12 Trisha K. Monesi

13 Attorneys for Plaintiff Amy Vail

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28